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In re Application of:	:	
Carlsson et al.	:	
Application No.: 09/868,526	:	DECISION
PCT No.: PCT/SE99/02311	:	
Int. Filing Date: 10 December 1999	:	ON
Priority Date: 22 December 1998	:	
Atty. Docket No.: CU-2571	:	PETITION
For: Tool Handle	:	

This is in response to the petition filed on 03 July 2008, which is being treated as a renewed petition under 37 CFR 1.137(b), a petition under 37 CFR 1.47(b) and a renewed submission under 37 CFR 1.42.

DISCUSSION

Petition Under 37 CFR 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply has not been submitted, as described below.

Requirements (2), (3) and (4) were satisfied previously.

Petition Under 37 CFR 1.47(b)

Petitioner now alleges that both joint inventor Jack Chalas and the legal representative of deceased joint inventor Stefan Carlsson are unavailable to sign the declaration. Accordingly, treatment under 37 CFR 1.47(b) is appropriate. A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(i), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known addresses of the inventors, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Regarding requirement (1), the petition fee has been paid.

Regarding requirement (2), petitioner has established the unavailability of Mr. Chalas. With respect to Mr. Carlsson's legal representative, Irene Elvingsson-Carlsson, petitioner has provided an affidavit signed by Hakan Johansson, who indicates that the legal representative made an oral refusal during a telephone call on 27 May 2008; however, it is not clear whether she had been provided with a complete copy of the application papers (along with the declaration) prior to this refusal. Hakan Johansson also states that "I sent a certified letter to Ms. Irene Elvingsson-Carlsson, which identified the application as PCT/SE99/02311, and included a copy of the Declaration documents." The affidavit refers to a return receipt for the letter, but no copy of that receipt has been made of record (a copy of a postal "Specifikation fran Posten" has been provided, but appears to be a mere payment receipt, and is not accompanied by a translation). In addition, it is not clear that the letter was accompanied by a complete copy of the application papers, or that the legal representative otherwise had been presented with a complete copy of the application. Thus, it would not be appropriate to construe her failure to return an executed declaration as a "refusal" within the meaning of 37 CFR 1.47(b).

Regarding requirement (3), petitioner previously provided the last known address of Mr. Chalas. A statement of the last known address of non-signing legal representative Irene Elvingsson-Carlsson appears on page 8 of the Declaration filed on 03 July 2008. Therefore, requirement (3) has been satisfied.

Regarding requirement (4), the declaration filed on 15 April 2002 (and signed by Mr. Carlsson) is not acceptable because the declaration accompanying a petition under 37 CFR 1.47(b) must be signed by the 37 CFR 1.47(b) applicant on behalf of all of the inventors (or their legal representatives). The declaration filed on 15 April 2002 was signed by Mr. Carlsson himself, and was not signed on his behalf (or on behalf of his legal representative) by a 37 CFR 1.47(b) applicant.

The 11- page declaration filed on 03 July 2008 appears to have been assembled by combining copies of pages of the declaration filed on 15 April 2002 (such as pages 1-5) with later-completed pages (such as page 6, dated 3 July 2008, and pages 9 and 11, dated "2008-06-03"). MPEP 201.03 explains in part that

While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. For example, where the inventive entity is A and B, a declaration may not be executed only by A naming only A as the inventor and a different declaration may not be executed only by B naming only B as the inventor, which two declarations are then combined into one declaration with a first page of boiler plate, a second page with A's signature, and a second page with B's signature (so that it appears that the declaration was executed with the entire inventive entity appearing in the declaration when it did not).

The declaration filed on 03 July 2008 is not acceptable under the policy explained above.

In addition, the declaration filed on 03 July 2008 is signed by Mr. Carlsson, but is also signed on his behalf, and on behalf of his legal representative, by Hakan Johansson. Mr. Carlsson's execution of this document is incompatible with it being executed on his behalf.

Regarding requirement (5), assignments by the inventors in favor of ANZA AB were filed on 15 April 2002. The assignment signed by Mr. Carlsson was directed specifically toward the instant international application. The assignment signed by Mr. Chalas was instead directed

toward Swedish application 9804480-3; petitioner has not clearly demonstrated whether the rights granted by this assignment extend to the instant application. *See* MPEP 409.03(f).

Regarding requirement (6), the petition does not appear to include an appropriate statement or showing. It is noted that the petition filed on 15 April 2002 included a form which alluded to this requirement, but the requirement has not actually been satisfied.

Submission Under 37 CFR 1.42

Review of the declaration of the inventors filed on 03 July 2008 reveals that it includes the citizenship, postal address and residence of both deceased inventor Stefan Carlsson and of his legal representative, Irene Elvingsson-Carlsson, and is signed on behalf of the legal representative by Hakan Johansson. However, for the reasons discussed above, the declaration is defective. Hence, it would not be appropriate to accept the declaration under 37 CFR 1.42 at this time.

DECISION

The petitions under 37 CFR 1.137(b) and 1.47(b) are **DISMISSED**, without prejudice.

The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration

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